

DEC 01 2005

Attorney Docket No.: 00.30US

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Bowen-Leaver, et al.

Serial No.: 09/897,871

Group Art Unit: 1617

Filed: July 2, 2001

Examiner: Yu, Gina C.

For: Ringing Nanogel Compositions

Remarks

In the office action of July 5, 2005, rejections of the claims of the present invention under 35 U.S.C. §103 as being unpatentable over three sets of references are maintained. The Examiner also finds that the term "at least" in Claims 6 and 7 is vague and unclear. However, the term "at least" in Claims 1 and 6 is used in the context of a value that is calculated from two points of data within a defined range, and is therefore, definite. Specifically, Claim 1 recites, with respect to the difference in complex viscosity, "... the nanogel has a difference in complex viscosity of at least about 10,000 poise under oscillation stress in the range of about 0 to 5,000 (dyne/cm²)." It has been recently found by the Court of Appeals for the Federal Circuit that claims containing ranges of weights and volumes that can be calculated or measured are not indefinite or in other words are definite. *Marley Mouldings Ltd. v. Mikron Industries Inc.*, 75 USPQ2d 1954, 1957 (CAFC 2005). In the present claims, the range is not open-ended nor does it include an indefinitely large number because the difference in complex viscosity is calculated with two points in the range of oscillation stress that is applied. The difference in complex viscosity, as one of ordinary skill in the art would understand, is namely, a mathematical calculation of an initial viscosity subtracted from a final viscosity (in the range of 0 to 5,000 (dyne/cm²)) where the result of the subtraction calculation is at least about 10,000 poise. Therefore, the difference in complex viscosity is limited and definite and one of ordinary skill in the art would understand and recognize the limitation and definiteness of the present claims. Thus, Applicants request that the Examiner's objection to Claims 1 and 6 under 35 U.S.C. §112, second paragraph be withdrawn.

In the present office action, with respect to the obviousness rejections, the Examiner indicates that a favorable consideration would be given to the claims if they were amended to positively exclude thickening agents as this would clearly distinguish the present invention over the cited prior art. Applicants previously asserted and maintain herein that the cited references fail to teach or suggest a self-structured nanogel like that of the present invention. However, at page 4, paragraph 14, it is indicated that the self-structured

ringing nanogels of the present invention are not only made without using large quantities of traditional emulsifiers, but also without a substantial amount of thickening agents as such are known and described in the CTRA as Viscosity Increasing Agents – Aqueous, and – Nonaqueous, 1995 ed.. While Applicants believe that the claims as originally filed are patentable over the cited prior art, Applicants, in the interest of furthering prosecution, amend herein the independent claims without prejudice, and request that the Examiner's rejections be withdrawn as Claims 1 to 3, 5 to 11, 13, 15, and 16 of the present application, as amended, satisfy the requirements of 35 U.S.C. §103(a). Applicants reserve the right to pursue allowance of the claims as originally filed.

CONCLUSION

Applicants gratefully acknowledge the Examiner's recognition of a favorable consideration of the present claims over the cited prior art references if they were amended to positively exclude thickening agents in the independent claims. Accordingly, in view of the arguments presented above in the present submission and the claims, as amended, are believed to be in condition for allowance, and issuance of a Notice of Allowance is respectfully solicited.

Respectfully submitted,

Date: 12/1/05



Dorenc M. Price (Reg. No. 43,018)
Estee Lauder Companies
155 Pinelawn Road
Greenway Plaza, Suite 345 South
Melville, NY 11747
(631) 414-6087